IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.12.2004

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE N.KANNADASAN

CRL APPEAL NO. 1635 OF 2002

1. Pandiyan
2. Anbu
3. Muthu
4. Anandan .. Appellants (Accused A1, A5, A6 & A7 in SC 146/97 respectively)

- Vs -

The Inspector of Police
Sathangadu Police Station
Chengalpattu District. .. Respondent (Respondent in
(Crime No.57 of 1996) SC 146/97)

Appeal preferred against the conviction and sentence passed by the learned Principal Sessions Judge, Chengalpattu, in S.C. No.146/97 dated 5.12.2001 as stated therein.

For Appellants : Mr. Mohideen Basha for A-1, A-6 & A-7
Mr.V.Gopinath, SC for
Mr. V.Devendhiran for A-5

For Respondent : Mr. A.Kandasamy, APP

JUDGMENT

(JUDGMENT OF THE COURT WAS MADE BY N.DHINAKAR, J.)

A-1 and A-5 to A-7 in S.C. No.146/97 are the appellants in the above appeal. They were tried along with five other accused before the learned Sessions Judge, Chengalpattu. In this judgment, for the sake of convenience, the appellants as well as the five other accused will be referred as A-1 to A-9 in the same order as they were arrayed before the learned Sessions Judge.

2. A-1 to A-9 were charged under Section 148 IPC under charge No.1 and A-1 to A-4 and A-5 to A-9 were charged under Section 302 IPC under charge Nos. 2 and 3 for causing the death of Kannan (D-1) and Dilliraj (D-2) respectively. The allegation against them in the said charges is that at 10.30 p.m. on 31.3.96, A-1 to A-9 formed themselves into an unlawful assembly with the common object of murdering Kannan (D-1) and Dilliraj (D-2) and in furtherance of the said common object, A-1 to A-4 attacked Kannan (D-1) with patta knives and caused his

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death and that A-5 to A-9 attacked Dilliraj (D-2) and caused injuries, which lead to their death. The learned trial Judge, while finding A-1 to A-9 guilty under Section 148 IPC, sentenced each one of them to imprisonment for life, and A-1 to A-4, though were charged under Section 302 for causing the death of D-1, A-2 to A-4 were acquitted by the learned sessions Judge, but A-1 alone was found guilty under the said charge for which he was sentenced to imprisonment for life. Similarly, A-5 to A-9, though were charged under Section 302 IPC for causing the death of D-2, Dilliraj, the trial Judge convicted only A-5 to A-7 under the said charge and sentenced each one of them to imprisonment for life. A-1 and A-5 to A-7 have preferred the above appeal though the other accused, who have been acquitted of the charge under Section 302 did not choose to prefer an appeal against their conviction and sentence imposed upon them under Section 148 IPC.

3. The case of the prosecution could be briefly summarised as follows :-

D-1 and D-2 are brothers. P.W.1 is the younger brother of D-1 and D-2. P.W.2 is a relative of P.W.1 as well as D-1 and D-2. P.W.10 is the wife of D-2. A-1 to A-9 and the witnesses were residing at Ambedkar Nagar, Tiruvotriyur. P.W.1 was running a fancy store in the main road at Ambedkar Nagar. About two days prior to the date of occurrence A-1 and A-2 went to the fancy shop run by P.W.1 and picked up a quarrel. A complaint was given at the police station and both the accused were arrested. Later, on 29.3.96 A-1 and the other accused went to the shop of P.W.1 and created a scene by picking up quarrel with P.W.1. P.W.s 6 and 7 intervened and asked them not to behave in an unruly manner. The accused left the scene of occurrence after threatening that they will take care of P.W.1 and his brothers. This is said to be the motive for the occurrence, which took place at 10.30 p.m. on 31.3.96.

4. At 10.30 p.m. on 31.3.96 A-1 to A-9 went to the shop of P.W.1 and picked up a quarrel. On hearing about the quarrel, D-1 and D-2, the elder brothers of P.W.1, rushed to the shop. They questioned the accused. The accused, telling them that they were waiting only for them, commenced the attack. A-1 cut D-1 with a patta knife and A-5 followed it by cutting D-2 on the neck. A-1 ran towards Pillaiyar Koil Lane and D-2 ran towards Saraswathy Nagar. P.W.s 1 and 8 ran behind D-1 to prevent the attack, but A-1 caught hold of D-1 and A-1 to A-4 cut him indiscriminately. On seeing the ferocious attack on D-1, P.W.1 ran away from the place.

5. In the meantime, P.W.2, who ran behind D-2 saw A-5 to A-9 overpowering D-2. Dilliraj (D-2) was cut by A-5 to A-9 on various parts of his body. All the five accused, thereafter, ran away from the place. P.W.1 after seeing the attack on D-1, while running from the scene of occurrence met P.W.2 on the way at saraswathy nagar, who informed him that D-2 was cut by A-5 to A-9 and in turn P.W.1 informed P.W.2 that D-1 was cut by A-1 to A-4.

6. P.W.1 went to Sathangadu police station and gave a written complaint to P.W.16, the head constable, at 11.00 p.m. The said complaint stands marked as Ex.P-1. On the said complaint, Ex.P-1, P.W.16 registered a case in crime No.57/96 against A-1 to A-9 under

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Sections 147, 148, 341 and 302 IPC. Ex.P-20 is the copy of the printed first information report. The express reports were despatched to the higher officials including court and P.W.17, the Inspector of Police, Sathangadu police station was informed.

7. P.W.17 reached the police station at 0030 hours on 31.3.96/1.4.96 where he obtained a copy of the printed first information report. He proceeded to the scene of occurrence at 1.00 a.m. and in the presence of P.W.9 and another he prepared an observation mahazar, Ex.P-5 as regards the place where D-2 was cut and an observation mahazar, Ex.P-4 as regards the place where D-1 was cut. He prepared a rough sketch, Ex.P-21 regarding the scene of occurrence of D-1 and D-2. He conducted inquest between 1.30 and 2.30 a.m. over the dead body of D-1 in the presence of panchayatadars. The inquest over the dead body of D-2 was commenced at 2.30 a.m. and it was over by 3.30 a.m. Witnesses were questioned at the time of inquest and the inquest report stands marked as Ex.P-22. The inquest report with regard to D-2 stands marked as Ex.P-23. During the inquest of D-1 and D-2, P.W.s 1 to 3 were questioned and their statements were recorded. He seized bloodstained earth, M.O.9 and sample earth, M.O.10 from the place where the dead body of D-2 was lying under a mahazar, Ex.P-3 attested by witnesses. At 4.00 a.m., he seized bloodstained earth, M.O.7 and sample earth M.O.8 from the place where the dead body of D-1 was lying under a mahazar, Ex.P-4. After inquest the two dead bodies were handed over to a police constable with requisitions to the doctor for conducting autopsy.

8. On receipt of the requisition and the dead bodies, P.W.15, the Police Surgeon and Tutor in Forensic Medicine, Stanley Medical College, Madras, conducted autopsy on the body of Kannan (D-1) and found the following external ante-mortem injuries :-

> "1) A gaping incised wound 19 cms long x 2 cms breadth extending from middle of forehead to the right side of back of head; a through and through cut injury. The injury has pierced the skull cavity on the right side of head and gone deep into the brain matter on the right side. The injury has cut the right ear in the middle. The brain matter is found flowing through the incised wound.
> 2) Incised wound 10 x 2 cms bone deep over the right temporal and parietal region.
> 3) Incised wound 7 x 3 cms bone deep over the right side of back head over the occipital region.
> 4) Incised wound 16 x 2 cms bone deep extending from middle of right side of face to the back of neck below the right ear. This injury has pierced the right mandle.
> 5) Incised wound 25 x 1 cms bone deep over the middle of face extending from right side of face just above the upper lip. This injury has cut left and right mandible in the middle.
> 6) Incised wound 9 x 4 cms left side of back just below the left ear.
> 7) Incised wound 5 x 1 cms bone deep extending from the angle of mouth on the left side of face.

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8) Incised wound 11 x 1 cms bone deep over the front of chin.
9) Incised wound 2 x 1 cms bone deep middle of right side of face over the right mandible.
10) Incised wound 16 x 3 cms over the upper most portion of neck close to the mandible 9 cms depth. This injury has pierced and cut trachea in the midline.'
11) Incised wound 13 x 2 cms over middle of right side of neck 6 cms width. This injury has cut all the deep structures of neck upto the cervical spine.
12) Incised wound 9 x 3 cms just above the collar bone 4 cms depth.
13) Incised wound 7 x 1 cms skin deep over the base of left side of neck.
14) Incised wound 13 x ¼ cms muscle deep over the front of right shoulder tailing of the wound over the right arm.
15) Incised wound 2 x 1 cms skin deep over the left collar bone.
16) Incised wound 4 x 1 cms muscle deep front of middle of left arm.
17) Incised wound 5 x 2 cms muscle deep over the left forearm, over the base left thumb.
18) Incised wound 4 x 1 cms bone deep over the left palm over the base of left little finger.
19) Three small incised wounds 2 x 1 cms each bone deep found over the base of left middle and little finger. The underlying bones found cut.
20) Incised wound 10 x ¼ cms skin deep over the dorsum of right hand.
21) Incised wound 3 x 1 cms bone deep over the back of right shoulder.
22) Incised wound 5 x 1 cms bone deep back of right shoulder just below the previous injury.
23) Stab injury 4 x 2 cms over the left side of chest 11 cms below the left nipple 4 cms depth.
24) Stab injury 8 x 2 cms middle of lower aspect of abdomen 8 cms below the umbilicus. This injury has pierced the bladder.
25) Abrasions 2 x 1 cms; 4 x 2 cms over the left knee.
26) Abrasion 3 x 1 cms over the right knee."

The doctor issued Ex.P-19, post-mortem certificate with his opinion that the deceased would appear to have died on account of shock and haemorrhage due to multiple injuries.

9. The doctor, P.W.15, also conducted autopsy on the dead body of Dilliraj (D-2) and found the following external ante-mortem injuries :-

"1) Incised wound 7 cms x 8 cms. 15 cms long x 1 cm bone deep over top of centre of head.
2) Incised wound 7 x 1 cms x bone deep below the previous injury over the occipital region of head.
3) Incised wound 9 x 1 cms bone deep over the lower

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aspect of occipital region of head on the left side.
4) Incised wound extending from the middle of chin to the back left ear 24 x 1 cms bone deep. The injury has cut the upper end of left ear.
5) Incised wound 7 x 1 cms muscle deep 3 cms below the left ear over the upper portion of side of back.
6) Incised wound 16 x 1 cms bone deep extending fhe angle of left side of mouth to the left forehead.
7) Incised wound 12 x 1 cms bone deep a clean and sharp cut over the nose exposing the deep structures.
8) Incised wound 4 x 1 cms bone deep over the left side of forehead above the eyebrow.
9) Incised wound 7 x 0.5 cms bone deep on the right side of back.
10) Incised wound 8 x 1 cms bone deep over the centre of chin.
11) Incised wound 5 x 1 cms right side of chin close to the previous injury, the underlying bone mandible is clean cut on the middle on right side.
12) Incised wound 7 x 1 cms muscle deep over the upper portion of left side of neck.
13) Incised wound 8 x 2 cms muscle deep over the left side of neck.
14) Incised wound 11 x 2 cms middle of upper portion of neck. This injury has cut and exposed the trachea in the midline.
15) Incised wound 3 x 2 cms over the right clavicle. Right clavicle is found clean cut at the medial end.
16) Incised wound 7 x 2 cms. 4 cms depth over the top of right shoulder. This injury has cut head of right humerus.
17) Two linear incised wounds 10 x ¼ cms and 10 x ¼ cms skin deep over the outer aspect of upper portion of right arm.
18) Incised wound 5 x ½ cms skin deep middle of back of right arm.
19) Incised wound 5 x 1 cms skin deep lower aspect back of right arm.
20) Incised wound 4 x 2 cms bone deep over the outer aspect right elbow. Both bones of right elbow found clean cut through through this injury.
21) Incised wound 2 x 1 cms bone deep over the right wrist.
22) Incised wound 5 x 1 cms skin deep over the dorsum of right hand.
23) Incised wound 9 x 2 cms bone deep over the dorsum of right hand, between right middle and little finger.
24) Incised wound 8 x 2 cms bone deep top of left shoulder.
25) Incised wound 9 x ¼ cms skin deep outer aspect of upper portion of left arm.
26) Incised wound 14 x ¼ cms skin deep middle of back of left arm.
27) Incised wound 2 x 1 cms bone deep back of left elbow.
28) Incised wound 4 x 1 cms muscle deep back of left

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forearm.
29) Incised wound 4 x ¼ cms skin deep over the left wrist.
30) Incised wound 5 x 2 cms bone deep over the left wrist.
31) Incised wound 6 x 2 cms bone deep over the inner aspect left wrist. Both bones of left forearm are found clean cut through this injury.
32) Incised wound 10 x ¼ cms skin deep over the back of left shoulder.
33) Incised wound 14 x ¼ cms over the back of left shoulder skin deep.
34) Incised wound 43 x 1 cms bone deep over the back lower aspect of left shoulder.
35) Incised wound 9 x ¼ cms skin deep over the upper portion of middle of left side of back.
36) Incised wound 10 x ¼ cms skin deep middle portion of left side of back.
37) Incised wound 11 x ¼ cms skin deep over the lower portion of left side of back.
38) Multiple linear abrasions 8 cms, 10 cms, 11 cms and 7 cms over the front of middle of abdomen above the umbilicus."

The doctor issued Ex.P-15, post-mortem certificate with his opinion that the deceased would appear to have died on account of shock and haemorrhage due to multiple injuries.

10. The clothes worn by D-1, M.O.s 11 to 13, on being produced by the police constable, who was present at the time of autopsy, were seized under Ex.P-24 and, similarly, M.O.s 14 to 17, the clothes, which were on the body of D-2 on being produced by the police constable, were seized under a mahazar, Ex.P-25. He formed a special party to arrest the accused. On 3.4.96 he questioned witnesses and recorded their statements. On 4.4.96, P.W.17 came to know that A-1, A-2, A-4 and A-6 to A-8 have surrendered before the Judicial Magistrate, Tiruvallur. He filed a petition on 8.4.96 for taking them into police custody. He questioned the doctor and recorded his statement. On 10.6.96 on the orders of the court, he took the accused who surrendered before the court into custody. On 11.4.96 he questioned the accused in the presence of witnesses. A-1 gave a statement, the admissible portion of which is marked as Ex.P-26. In pursuance of the admissible portion of the statement of A-1, he took the police party to a tree near a railway gate at Eranavur and produced knives, M.O.s 1 to 5 and patta knives, M.O.s 18 and 19, which were seized under a mahazar, Ex.P-27. He questioned witnesses, who attested the mahazar, and recorded their statements.

11. A-3 was arrested on 15.4.96 and he gave a statement, which was reduced into writing. In pursuance of the admissible portion of the statement, which stands marked as Ex.P-28, a knife, M.O.21 was seized under a mahazar, Ex.P-29. In the meantime, A-5 surrendered before the Judicial Magistrate and the information was received by the investigating officer, P.W.17 on 8.4.96. On 12.4.96 he filed a petition before the learned Magistrate to take A-5 into custody. The custody of A-5 was ordered by the Magistrate and he was brought to the

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police station on 19.4.96. He was questioned on 20.4.96 in the presence of witnesses. He gave a statement, the admissible portion of which is Ex.P-12, pursuant to which he took the police party to a railway line and produced M.O.2, which he kept concealed in a dustbin. The same was seized under a mahazar, Ex.P-13. He was thereafter sent to court for remand.

12. A-9 surrendered before the Judicial Magistrate, Madurantakam on 7.4.96. He was also taken into police custody on the orders of the court. He was questioned at the police station in the presence of witnesses and in pursuance of the admissible portion of the statement given by A-9, which stands marked as Ex.P-10, the accused took the police party to Ambedkar Nagar and from a house in Pillaiyar Koil Street, M.O.6, patta knife was produced, which was seized under a mahazar, Ex.P-11. The accused was sent to court for remand. On 8.4.96 the officer gave a requisition, Ex.P-30 to the court to forward the material objects for analysis and the court in turn with the covering letter, Ex.P-31 sent the material objects for chemical analysis. Ex.P-32 is the chemical analysis report and Ex.P-33 is the serologist report. On 19.4.96 he also sent the knives with requisitions, Ex.P-34 and P-35 to send them for analysis. The court on forwarding them received Ex.P-37 the chemical analysis report and Ex.P-38 the serologist report. He questioned the doctor, who conducted autopsy and also examined witnesses to satisfy himself that the electric lights were burning at the time of incident. He also investigated as to the presence of an electric light post near the scene of occurrence, which revealed that the light was burning on the date of incident. During investigation he also found out that the occurrence had taken place about four or five days prior to the date of full moon and there was sufficient light. The officer, after completion of investigation, filed the final report against all the accused on 24.6.96.

13. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them. They denied all the incriminating circumstances. They did not examine any witness on their side.

14. The learned counsel appearing for the appellants submits that since A-2, A-3, A-4, A-8 and A-9 have been acquitted on the same evidence, the trial court was not justified in convicting A-1 and A-5 to A-7 alone. It is his further submission that P.W.s 1, 4 and 5 having been treated hostile, the trial Judge ought not to have relied upon the evidence of P.W.s 2 and 3 to convict the accused. It is his further submission that since the witnesses are persons of bad character, their evidence should not be accepted.

15. On the above contentions we have heard the learned Addl. Public Prosecutor for the respondent and perused the evidence, both oral and documentary.

16. The appellants did not dispute the cause of death of D-1 and D-2 before the trial court nor it is disputed before this Court and the cause of death of D-1 and D-2 stands established through the evidence of the doctor, P.W.15, who conducted autopsy on the two dead bodies and who issued Exs.P-19 and P-15 respectively. A perusal of

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the evidence of P.W.15 and the two post-mortem certificates show that both the deceased suffered indiscriminate cuts. D-1 suffered as many as 26 injuries, whereas D-2 suffered 38 injuries and most of the injuries found on D-1 and D-2 are incised injuries. The doctor has opined that all the incised injuries could have been caused with sharp edged weapons and that both the deceased would have died on account of shock and haemorrhage due to multiple injuries. On the above facts we have no hesitation in coming to the conclusion that D-1 and D-2 died on account of homicidal violence.

17. The prosecution before the trial court examined P.W.s 1 to 5 and 8 as witnesses to the occurrence. Of them P.W.s 4, 5 and 8 turned hostile. P.W.1, though spoke about the attack on D-1 was not able to give the details as regards the specific overtacts of A-1 to A-4 on D-1 and, therefore, the prosecutor strangely sought permission to treat him hostile and the court also gave permission to treat him hostile, which in our view is not justified. In any event, the fact remains that P.W.1 was treated hostile not because he went back on his earlier statement recorded under Section 161 Cr.P.C., but only on the ground that he was not able to specifically attribute as to which accused caused which injury on D-1.

18. We will now take up the contention of the counsel for the appellants. It is no doubt true, as could be seen from the evidence of P.W.1, that P.W.1 as well as his brothers, D-1 and D-2 and the other brothers have criminal records and some of them have been sentenced to imprisonment for life. It could also be seen that one of the brother died in jail and a criminal case was also filed against P.W.1 relating to an attack against another person. The fact that P.W.1 and his brothers are involved in criminal cases will not be a ground to reject their evidence. The defence inspite of lengthy cross-examination of P.W.1 satisfied itself by only making suggestions to P.W.1 that since P.W.1 and his brothers are rowdy elements, the deceased were attacked by unknown persons and that the first information report in the case was not prepared at the time and in the manner alleged and it should have come at a later point of time. This suggestion that the first information report came into existence at a later point of time probably was on account of the fact that the first information report was received by the Magistrate on 2.4.96 at 9.35 a.m. It fact it was suggested to P.W.1 that 31.3.96 was a holiday, but he denied it. A perusal of the calendar for the year 1996 shows that 31.3.96 was a holiday since it was declared as a holiday on account of Mahavir Jayanthi. A perusal of the complaint, Ex.P-1 and the printed first information report shows that the learned Magistrate has initialled and put the date below the signature as 1.4.96, but the court seal is dated 2.4.96. This is because, 1.4.96 being a holiday, the Magistrate would have taken the original complaint, Ex.P-1 and the printed first information report to the court on 2.4.96, which is the next working day. Therefore, the suggestion made to the witness, P.W.1 that the complaint, Ex.P-1 could have been given at a later point of time is not supported by any material, and as we have already observed, the prosecution case also cannot be rejected on the only ground that the witnesses do not have any reputation in the locality as they are involved in some criminal cases.

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19. P.W.1 was subjected to severe cross-examination, but the defence was satisfied only by making suggestions and did not elicit any answer in favour of any of the accused for us to hold that the deceased, D-1 and D-2 did not suffer injuries at the time and at the hands of the appellants herein. We, therefore, accept the evidence of P.W.s 2 and 3 as well as the evidence of P.W.1, though he was treated hostile, since he has stated that A-1 to A-4 have attacked D-1, Kannan, though he was not able to mention the exact overtacts. Once we accept their evidence, which is also supported by medical evidence, we cannot but hold that A-1 and A-5 to A-7 were rightly convicted for the offence of murder.

20. Though A-1 was convicted under Section 302 simplicitor as charged and A-5 to A-7 were similarly convicted under Section 302 simplicitor as charged, we feel that in the absence of any evidence as to which injury caused the death of D-1, the conviction of A-1 under Section 302 simplicitor has to be modified to one under Section 302 read with 34 IPC and similarly the conviction of A-5 to A-7 under Section 302 IPC has to be modified to one under Section 302 read with 34 IPC, since there is no definite evidence as to which injury inflicted by which accused caused the death of D-2, though the evidence of the prosecution clearly establish that A-1 and A-5 to A-7 attacked both the deceased by joining with other accused and inflicted indiscriminate cuts. It is needless to say at this stage that though the above four appellants could also be convicted under Section 302 read with 149 IPC, we are not convicting them with the aid of Section 149 IPC since there is no dispute that Section 149 IPC is an independent offence and in the absence of any charge having been framed against the appellants by the trial court, they cannot now be convicted with the aid of Section 149 IPC. We, therefore, modify the conviction of A-1 and A-5 to A-7 as mentioned above and the sentence of life imprisonment imposed upon A-1 and A-5 to A-7 is confirmed.

21. At this stage it is to be remembered that the trial Judge, though acquitted A-2 to A-4, A-8 and A-9 under Section 302 IPC, found them guilty under Section 148 IPC after giving the following finding :-

> "It is clear from the evidence of P.W.s 1 to 3 that all the accused 1 to 9 unlawfully assembled in front of the shop fancy store of P.W.1 Venkateswaran armed with deadly weapons with the common object to commit the murder of P.W.1 Venkateswaran and his brothers Kannan and Dilliraj and so it cannot be said that there was no common object of the accused 1 to 9 in making unlawful assembly armed with deadly weapons in front of P.W.1 Venkateswaran's fancy store."

The above finding of the learned sessions Judge, therefore, shows that according to him the prosecution has succeeded in establishing the common object of the unlawful assembly of all the accused. The learned trial Judge having given a finding that all the accused have formed into an unlawful assembly with the common object of murdering D-1 and D-2, unfortunately acquitted A-2 to A-4, A-8 and A-9 under Section 302 IPC on untenable grounds, though he convicted them under Section 148 IPC. This Court, on account of the acquittal of A-2 to A-4, A-8 and A-9 under Section 302 IPC, cannot be deterred from

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upholding the conviction of A-1 and A-5 to A-7, who are the appellants in the above appeal from being convicted under Section 148 IPC, though they are only four in number, since the prosecution had come out with a definite case that the above four appellants formed themselves into an unlawful assembly along with the other accused with the common object of causing the murder of D-1 and D-2. We, therefore, uphold the conviction of A-1 and A-5 to A-7 under Section 148 IPC and the sentence imposed upon them is also confirmed.

22. We have already extracted the findings of the learned trial Judge, wherein the learned trial Judge had held that there is an unlawful assembly of all the accused and the common object of the said unlawful assembly was to commit the murder of D-1 and D-2 and also to murder P.W.1. The learned trial Judge, as we stated earlier, though gave such a finding that there was an unlawful assembly of all the accused, acquitted A-2 to A-4, A-8 and A-9 on grounds, which in our view are not satisfactory.

23. We, therefore, direct the Registry to register a suo motu revision against the acquittal of A-2 to A-4, A-8 and A-9 and issue notice to them in the said revision as to why their acquittal should not be set aside.

24. It is also made clear that though Section 223 enables that all persons could be tried together for the commission of the offence committed in the course of the same transaction, it is needless to say that it is only an enabling provision so as to prevent multiplicity of proceedings and there is no provision, which prevents the court from trying the case as against other accused separately if the facts and circumstances of the particular case so warrant.

25. We have disposed of the above appeal and directed the registration of a suo motu revision against the accused mentioned above, namely, A-2 to A-4, A-8 and A-9, on account of the fact that A-1 and A-5 to A-7 are in jail from the date of their surrender and we do not want to keep them under suspense as to their fate; but at the same time we are also of the view that the the acquittal of A-2 to A-4, A-8 and A-9 by the trial court requires reconsideration by this Court as regards their acquittal and, therefore, we have adopted the above course by ordering registration of suo motu revision against the said accused.

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26. In view of the fact that we have ordered registration of suo motu revision, the conviction of A-2 to A-4, A-8 and A-9 under Section 148 IPC has to be set aside as they have to appear and argue the suo motu revision. Accordingly, the conviction of A-2 to A-4, A-8 and A-9 under Section 148 IPC is set aside.

27. We make it clear that the acquittal of A-2 to A-4, A-8 and A-9 under Section 148 IPC in this appeal does not mean that we have held that they did not commit rioting by forming themselves into an unlawful assembly and it is for the revisional court to consider the above aspect in the suo motu revision.

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28. In the result, this criminal appeal is dismissed. The Registry is directed to register a suo motu revision against the

acquittal of A-2 to A-4, A-8 and A-9 and issue notice to them in the said revision as to why their acquittal should not be set aside.

GLN

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Principal Sessions Judge, Chengalpet.

2. The District Collector, Chengalpet.

3. The Director General of Police, Chennai.

4. The Public Prosecutor, High Court, Madras.

5. The Superintendent of Central Prison, Vellore.

6. The Inspector of Police, Sathangadu Police Station, Chengalpet Dist.

7. The Superintendent, Central Prison, Chennai.

8. The Sub. Asst. Registrar, Criminal Section, High Court, Madras.

9. The Section Officer, Crl. Section, High Court, Madras.

+ 1 CC to Mr.N.Mohideen basha, Advocate SR 53802.

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